VASAN P SINNADURAI v. DATO' SRI DR LEE VILLE (DIDAKWA SEBAGAI PEGAWAI AWAM KELAB RENANG PULAU PINANG) & ANOR

HIGH COURT MALAYA, GEORGETOWN
QUAY CHEW SOON J
[CIVIL SUIT NO: PA-22NCVC-19-02-2025]
19 SEPTEMBER 2025

Abstract – *An act amounting to misconduct within the terms of the Rules of a Club, is subject to disciplinary proceedings, regardless of whether the member who committed the misconduct is one who holds the position in the management committee of the club or just an ordinary member. No one can attempt to evade accountability merely on the grounds that the complaint of misconduct is not against the member personally as a member but against the member in his position in the committee.*

UNINCORPORATED ASSOCIATIONS: *Clubs – Disciplinary proceedings – Complaint against management committee of club ('MC') leading to charge against Vice-President ('VC') of club – Whether charge within rules of club – Jurisdiction of disciplinary committee ('DC') – Whether complaint could form subject of disciplinary action against VC – Whether MC or its members immune from investigation – Whether MC only answerable to general body at AGM/EGM – Whether DC has power to decide on charges and recommend punishment – Whether VC given right of hearing by DC*

The plaintiff was a member of the Penang Swimming Club ('Club'). He was elected as the Vice-President of the Club for the 2022-2023 term, alongside 11 other members, collectively known as the management or main committee ('MC') of the Club. In 2024, the Disciplinary Committee ('DC') received a complaint from the second defendant, a member of the Club, in relation to a decision made by the MC to waive the costs of RM8,320 awarded by the Penang High Court against certain member of the Club. Following the complaint, a charge was framed against the plaintiff. The plaintiff's case was that (i) the DC could not investigate into matters pertaining to the collective decision made by the previous MC; (ii) the complaint against the plaintiff was not in respect of a misconduct complained of personally against the plaintiff as a member; and (iii) the MC's actions should not be subject to disciplinary proceedings. The first defendant, the public officer of the Club, filed an application ('encl. 10') under O. 14A and O. 33 rr. 2 and 5 of the Rules of Court 2012 ('ROC') for the determination of the questions, *inter alia*: (i) whether disciplinary action could be taken against the plaintiff who was a member of the MC; (ii) whether the charge against the plaintiff was within the rules of the Club; (iii) whether the plaintiff

was given a right of hearing by the DC; and (iv) whether the requirement in respect of the EGM requisition by the plaintiff was complied with by the Club. A

Held (allowing claim in part):

(1) The DC has the jurisdiction to inquire into a complaint against any member of the Club, whether he is an ordinary member or a member of the MC. Hence, the DC has the power to inquire into the complaint letter from the second defendant and to rule on the decision of the MC. The decision as to whether, by waiving the court-awarded costs, r. 38(b) of the Club Rules had been contravened, was a matter to be determined by the internal management of the Club, *ie*, the DC and the MC. The complaint lodged by the second defendant could form the subject of a disciplinary action. (paras 25, 26, 28 & 29) B C

(2) The Club could not be expected to call for an EGM every time misconduct is committed. The fact that the MC is answerable to the general body at the AGM or EGM, does not mean that any misconduct committed by it could not be investigated upon. It is the DC which decides whether what has been done is a misconduct from the standpoint of the Club Rules. The DC has the power to decide on charges of misconduct and recommend the punishment, if there is basis for finding that an individual member or a body such as the MC has committed misconduct. An act of the MC which is contrary to the Club Rules, could amount to misconduct. The highest body of the Club, *ie*, the MC, can be questioned and is not immune from investigation. Decisions made in the AGM or EGM of the Club are binding and could not be disregarded. (paras 30, 31, 33 & 36) D E F

(3) Without exception, all members of the Club are subject to the Club Rules, including disciplinary proceedings for misconduct. Members of the MC do not enjoy immunity from disciplinary proceedings when the matter relates to misconduct. The plaintiff was a member of the Club and also a member of the MC at the material time. Regardless of whether he was a member of the MC or just an ordinary member he had to adhere to the Club Rules in respect of discipline. He could not attempt to escape accountability by contending that the complaint of misconduct was not against him personally as a member while on the Club premises. In the circumstances, question (i) was answered in the affirmative. The DC could take action against the plaintiff, a member of the MC, based on the complaint from the second defendant. (paras 38, 40 & 41) G H

(4) The plaintiff could not approbate and reprobate, in that, he could not on the one hand, challenge the powers of the DC in instituting disciplinary proceedings against him in this case, and on the other hand, accept the decision in another case. The plaintiff was precluded by estoppel and acquiescence from challenging the powers of the DC. In the I

circumstances, question (ii) was answered in the affirmative, *to wit*, that the charge against the plaintiff was within the Club Rules and was not *ultra vires*. (paras 45 & 46)

(5) Under r. 41(e) of the Club Rules, every member has the right to be heard either in person and/or in writing. The plaintiff had stated in no uncertain terms that he wished to be heard in person. However, he was unable to attend the hearing due to being out of the country and requested a postponement. The plaintiff's request was denied, and the hearing was conducted in the plaintiff's absence. The DC issued a ruling and concluded that the Club Rules necessitated the plaintiff's expulsion from the Club. There was no justifiable reason to proceed on the originally scheduled date. The DC had breached the principles of natural justice by failing to provide adequate time for the plaintiff to prepare a defence against the charge and defend the charge in person. Question (iii) was thus answered in the negative. (paras 48, 51, 52, 54, 57 & 58)

(6) Only when the member fails to resign or transfer his membership as per the recommendation of the DC, can it then take the action of expelling the member as specified in r. 41(d)(iv) of the Club Rules. The disciplinary inquiry conducted in the plaintiff's absence was void and the decision to expel the plaintiff from the Club was invalid. The court thus ordered a fresh disciplinary hearing be conducted by the DC, with the plaintiff being afforded an opportunity to be heard. (para 62)

(7) Subsequent to his expulsion, the plaintiff exercised his right of appeal against the expulsion under r. 41(f) of the Club Rules. The Club convened two EGMs; the morning session for the appeal by another member of the Club ('Chan Kean Hin') and the afternoon session for the plaintiff's appeal. In the absence of a requirement for both EGMs to be held together, the plaintiff's request to have the EGMs together or consecutively was not necessary. Further, as the EGM was requested by the plaintiff pursuant to r. 41(f) of the Club Rules, the EGM was requisitioned by a member and not one called by the MC. Therefore, the EGM fell under r. 36(ii) wherein the Club was entitled to cancel the scheduled EGM when the requisite quorum of 200 members was not achieved within the prescribed time. There was no provision in the Club Rules for the MC to set a date for a new EGM to consider the plaintiff's appeal. Question (iv) was answered in the affirmative. (paras 66, 67, 70, 72, 73 & 79)

(8) An application under O. 14A and O. 33 r. 2 of the ROC is not appropriate where the facts are in dispute or where extrinsic evidence is required to be adduced. In this case, the material facts are not in dispute. Accordingly, O. 14A and O. 33 r. 2 of the of the ROC may be resorted to. This action was suitable for determination without full trial. (paras 81 & 82)

(9) It would be wrong and a dereliction of duty for the High Court Judge ('HCJ') to disqualify himself from presiding over the matter in absence of any grounds to do so. Hence, in declining the application of recusal from hearing the matter, it was held that the HCJ was only an honorary member of the Club, a membership given to all sitting judges at the High Court in Penang and other selected persons. As an honorary member, the HCJ had no direct interest in the Club. Having access to the Club facilities also did not deprive the HCJ of impartiality and judicial independence. Also, the mere fact that the judge had made a decision in relation to an application filed by another member of the Club did not disqualify His Lordship from hearing the plaintiff's case. (paras 85-87, 92 & 93)

Case(s) referred to:

A Karunathan Arunasalam & Ors v. Pentadbir Tanah Daerah Petaling & Another Appeal [2011] 7 CLJ 130 CA ***(refd)***

Chan Kean Hin v. Lee Ville & Ors [2024] CLJU 3180 HC ***(refd)***

Cheah Theam Kheng v. City Centre Sdn Bhd (In Liquidation) & Other Appeals [2012] 2 CLJ 16 CA ***(refd)***

Dream Property Sdn Bhd v. Atlas Housing Sdn Bhd [2007] 6 CLJ 741 CA ***(refd)***

Lembaga Pembangunan Industri Pembinaan Malaysia v. Konsortium JGC Corporation & Ors (Sued As Incorporated Partnership) [2015] 9 CLJ 273 FC ***(refd)***

Mat Ghaffar Baba v. Ketua Polis Negara & Anor [2008] 1 CLJ 773 CA ***(refd)***

Petroleum Nasional Bhd v. Kerajaan Negeri Terengganu & Another Appeal [2003] 4 CLJ 337 CA ***(refd)***

Ramba Bungkong & Ors v. Asco Green Sdn Bhd [2020] 8 CLJ 1 CA ***(refd)***

Savant-Asia Sdn Bhd v. Sunway PMI-Pile Construction Sdn Bhd [2008] 1 CLJ 191 CA ***(refd)***

Seloga Jaya Sdn Bhd v. UEM Genisys Sdn Bhd [2008] 2 CLJ 686 CA ***(refd)***

Thein Hong Teck & Ors v. Mohd Afrizan Husain & Another Appeal [2012] 1 CLJ 49 FC ***(refd)***

Yusof Sudin v. Suruhanjaya Perkhidmatan Polis & Anor [2012] 1 CLJ 448 FC ***(refd)***

Legislation referred to:

Rules of Court 2012, O. 14A, O. 33 rr. 2, 5

For the plaintiff - M Yunus Ali & Yeoh Wen De; M/s Yunus Ali & Kam

For the 1st defendant - Karin Lim Ai Ching, A Suppiah & Nicholas Lim; M/s Presgrave & Matthews

For the 2nd defendant - V Amareson; M/s Amareson & Meera

Reported by S Barathi

JUDGMENT

Quay Chew Soon J:

Introduction

[1] The first defendant ("D1") filed an application under encl. 10 dated 13 May 2025 for the determination of certain questions. Enclosure 10 is made under O. 14A and O. 33 rr. 2 and 5 of the Rules of Court 2012.

[2] In encl. 10, D1 seeks the following reliefs:

1) That based on the pleadings, that is:

a) the Writ and the Statement of Claim of the Plaintiff dated 12.2.2025;

b) the 1st Defendant's Statement of Defence dated 24.3.2025; and

c) the Plaintiff's Reply to the 1st Defendant's Defence dated 11.4.2025 filed under this action, this Honourable Court determine the questions which arise as follows:

i) Whether in view of the contents of the pleadings referred to above and the events which have transpired, disciplinary action can be taken against the Plaintiff, who was a member of the Main Committee of the Penang Swimming Club ("PSC") which had decided on the complaint lodged by the 2nd Defendant;

ii) Whether the charge against the Plaintiff is within the Rules of the PSC and not *ultra vires*;

iii) Whether the Plaintiff was given a right of hearing by the Disciplinary Committee of the PSC in respect of the charge against him; and

iv) Whether the requirement in respect of the EGM requisitioned by the Plaintiff was complied with by the PSC.

2) If the answers to the above questions are in the affirmative, the Plaintiff's claim against the 1st Defendant be dismissed.

3) That the Court determine any other question/s of law and/or fact which are deemed fit and proper to be determined.

[3] On 6 August 2025, I answered questions (i), (ii) and (iv) above in the affirmative, *ie*, in favour of D1. However, I answered question (iii) above in the negative, *ie*, in favour of the plaintiff ("P"). As such, I did not dismiss P's action against D1. Instead, I partially allowed P's claim against D1.

[4] I made the following orders:

1) Bahawa tuntutan Plaintif di Perenggan 24(b) dan 24(c) Pernyataan Tuntutan bertarikh 12.02.2025 (Lampiran 2) adalah di benarkan seperti berikut:

b) Suatu Deklarasi bahawa perbicaraan siasatan tatatertib yang di adakan pada 24/07/2024 adalah terbatal dan tidak sah; dan

c) Suatu Deklarasi bahawa Keputusan Jawatankuasa Tatatertib yang melucutkan Plaintif sebagai ahli PSC berkuatkuasa 03/10/2024 adalah terbatal dan tidak sah.

2) Bahawa tuntutan Plaintif di Perenggan 24(a), (d), (e), (f), (g), dan (h) Pernyataan Tuntutan bertarikh 12.02.2025 (Lampiran 2) adalah di tolak dan tidak di benarkan seperti berikut:

a) Suatu Deklarasi bahawa Defendan-Defendan telah bertindak secara *ultra vires* dan melanggar peraturan-peraturan di bawah Undang-Undang Kelab Renang Pulau Pinang dengan memulakan prosiding tatatertib terhadap Plaintif semasa mengambil bahagian sebagai ahli jawatankuasa dalam membuat keputusan kolektif;

…

d) Suatu Deklarasi bahawa Jawatankuasa Pengurusan melebihi kuasa nya dengan menolak secara tidak adil untuk mengadakan Mesyuarat Agung Luar Biasa (EOGM) seperti yang di mandatkan oleh Kaedah 36(i) Kaedah Kelab Renang Pulau Pinang;

e) Suatu Deklarasi bahawa di bawah Kaedah PSC, Jawatankuasa Tatatertib tidak mempunyai kuasa atau bidang kuasa untuk mempertimbangkan dan menyiasat sebarang aduan untuk memutuskan kesahihan atau kesahihan Keputusan kolektif Jawatankuasa Pengurusan;

f) Suatu Deklarasi bahawa Plaintif kekal sebagai ahli PSC;

g) Injunksi untuk melarang atau menghalang Defendan sendiri, pengkhidmat-pengkhidmatnya dan/atau ejen-ejen nya atau sebaliknya daripada mengadakan sebarang prosiding tatatertib terhadap Plaintif menurut aduan 13/5/2024;

h) Injunksi untuk melarang atau menghalang Defendan dengan sendirinya, penkhidmat-pengkhidmatnya dan/atau ejen-ejen nya atau sebaliknya daripada menghalang Plaintif daripada memasuki premis PSC dan/atau menikmati hak dan keistimewaannya sebagai ahli PSC.

3. Bahawa Jawatankuasa Tatatertib mengadakan perbicaraan siasatan/ inkuiri baru dan memberi Plaintif hak untuk hadir dan di dengar secara peribadi/sendiri;

[5] Here are the grounds of my decision.

Background Facts

The Club And Its Rules

[6] The Penang Swimming Club ("Club") is a social Club registered under the Societies Act 1966. The Club is governed by its rules, referred to as the "Club Rules". It is provided in the Club Rules that the Club's affairs shall be regulated by the Club Rules.

The Parties In This Suit

[7] P was at all material times a member of the Club. He was also the Vice-President of the Club from 2022 to 2023. In the year 2022, P was elected as the Vice-President of the Club for the 2022 to 2023 term, alongside 11 other members. They are collectively known as the management or main committee of the Club.

[8] Rule 24 of the Club Rules provides that the Club shall be managed by the main committee. The main committee consists of the President, Vice-President, Secretary, Treasurer, Club Captain and seven ordinary members.

[9] D1 is the public officer of the Club. The second defendant is a member of the Club.

The Complaint Against The Plaintiff

[10] On 13 May 2024, the disciplinary committee of the Club received a complaint from the second defendant in relation to the main committee for the 2022 to 2023 term. The complaint related to a decision made by the main committee to waive the costs of RM8,320 awarded by the Penang High Court against a certain member of the Club.

The Charge Against The Plaintiff

[11] Following the aforementioned complaint, a charge was framed against P as follows:

> You being a member of the Management Committee on 11.1.2023 at 9pm at Conference Room, Level 4, Tower Block of the Penang Swimming Club had waived the cost awarded by the court on 6th May 2022 amounting to RM8,000.00 (Ringgit: Eight Thousand Only) and allocator amounting to RM320.00 (Ringgit Three Hundred and Twenty only) in the case of Ng Lee Choo (memohon bagi diri sendiri dan sebagai wakil kepada penama-penama yang disenaraikan di dalam Lampiran A bersama Saman Pemula ini) v. Oh Teng Kee (di saman sebagai Pegawai Awam bagi Kelab Renang Pulau Pinang menurut seksyen 9(c) Akta Persatuan 1966) in the High Court of Malaya at Pulau Pinang (Originating Summons No. PA-24 NCvC-358-05/2021). Thus, you had breached Rule 38(b) on Finance under Rules of the Penang Swimming Club.

Disciplinary Proceedings In The Club

[12] The Club Rules contain provisions in respect of the disciplinary committee, the conduct of the members of the Club, inquiry into complaints, the punishment which can be meted out for misconduct and the internal remedies that are available to a member who has been found guilty of a charge. The relevant provisions of the Club Rules are described below.

[13] Under r. 41(a) of the Club Rules, the disciplinary committee shall consist of a Chairman and four other members. Under r. 41(b) of the Club Rules, the disciplinary committee shall have full powers to administer, manage and determine discipline amongst all categories of members of the Club, including the members' family and guest utilising the facilities of the Club.

[14] Under r. 41(c) of the Club Rules, any complaint regarding the behaviour or conduct of any member either within the Club premises or when representing the Club or when using affiliation facilities, and that of his

guest shall be made in writing and addressed to the secretary. In addition, any member of the main committee shall have the power to refer to the disciplinary committee any such misbehaviour or misconduct of a member or his guest. Upon receipt of the complaint, the secretary shall forthwith transmit it to the disciplinary committee for further action.

[15] Under r. 41(d) of the Club Rules, upon receipt of the complaint regarding the conduct of a member or his guest, the disciplinary committee shall within the prescribed time frame make such inquiry into the matter as it may consider necessary. If it shall be of the opinion that the conduct complained of or brought to its notice as aforesaid is unbecoming of a member of the Club or injurious to the character or interest of the Club, then, in such case, the disciplinary committee may:

(i) caution the member;

(ii) suspend the member from the privileges of membership for a period not exceeding three months; or

(iii) recommend to the member to resign from the Club or transfer his membership in accordance with the Club Rules. In the event of the member failing to resign or transfer his membership aforesaid within seven days after the recommendation, the disciplinary committee shall take action as is specified in r. 41(d)(iv).

[16] It is noted that the Club Rules actually made cross-reference to r. 41(b)(iv). That appears to be a typographical error, as no such r. 41(b)(iv) exist. It would appear that the cross-reference should actually be r. 41(d)(iv). Under r. 41(d)(iv) of the Club Rules, a member may be expelled from the Club.

[17] Under r. 41(e) of the Club Rules, before exercising any of the powers conferred on it by the above clauses, the disciplinary committee shall allow the member an opportunity to be heard either in person and/or in writing.

[18] Under r. 41(f) of the Club Rules, in the case of an expulsion, such member shall have a right of appeal to the general body by requesting the requisition of an EGM (extraordinary general meeting). This is done by the member *via* a letter addressed to the secretary within 14 days upon being informed in writing the decision of the disciplinary committee.

[19] By a simple majority, the general body may either confirm the decision of the disciplinary committee or order that the member be reinstated with such period of suspension as it might find proper. The decision of the house shall be final and binding upon the member.

[20] With this backdrop, I will now answer each of the four questions posed by D1 in encl. 10.

Question (i) – Whether The Disciplinary Committee Can Take Action Against The Plaintiff, A Member Of The Main Committee, Based On The Complaint From The Second Defendant

[21] The crux of P's case is that the disciplinary committee cannot investigate into the collective decision of the main committee. P contends that the collective decision of the main committee is not a misconduct, even if it demonstrates poor judgment.

[22] In his statement of claim, P avers that: (i) the disciplinary committee cannot investigate into matters pertaining to the collective decision made by the previous main committee; (ii) the complaint against P was not in respect of a misconduct complained of personally against P as a member; and (iii) the main committee's actions should not be subject to disciplinary proceedings.

[23] Based on P's stance, paras. 24(a) and 24(e) of his statement of claim sought the following reliefs:

> a) a declaration that the Defendants have acted *ultra vires* and violated the Penang Swimming Club Rules by instituting disciplinary proceedings against the Plaintiff while participating as a committee member in making a collective decision.
>
> …
>
> e) a declaration that under PSC Rules, the Disciplinary Committee has no power or jurisdiction to consider and inquire into any complaint to rule on the validity or legality of the collective decision of the Management Committee.

[24] In para. 8 of his statement of claim, P avers:

> The complaint is not a misconduct complaint against the Plaintiff personally as a member while on the Club premises. The Second Defendant's complaint alleging that the Management Committee of 2022 - 2023 had breached Rule 38 (b) of the Club Rules is his interpretation and understanding of the rule, which could not form the subject matter of a valid complaint. The Management Committee's interpretation of the rules and collective decision should not be subject to disciplinary proceedings. According to Rule 47(m) of the Club Rules, understanding or interpretation of the Club Rules rests in the first instance with the Management Committee. The redress by an aggrieved party by the decision of the Management Committee will be by recourse to the Extraordinary General Meeting under Rule 35.

[25] It is my finding that the disciplinary committee has the jurisdiction to inquire into a complaint against any member of the Club, whether he is an ordinary member or a member of the main committee. Further, in relation to complaints, the present main committee has interpreted the Club Rules in line with existing precedents.

[26] I find that the disciplinary committee has the power to inquire into the complaint letter dated 13 May 2024 from the second defendant. And to rule on the decision of the main committee made on 11 January 2023. The disciplinary committee is an independent body, separate and distinct from the main committee. No member is above the Club Rules. All members, including the members of the main committee, must abide by the Club Rules.

[27] D1 argues that waiving the court awarded costs amounts to misconduct, as such an act contravenes r. 38(b) of the Club Rules. D1 submits as follows:

(i) the main committee has a duty to act with care and diligence in the best interest of the Club. The members of the main committee are collectively and individually accountable for their actions taken on behalf of the Club. A breach of duty can constitute misconduct; and

(ii) depriving the Club of what is rightfully due to it cannot be considered a decision made in the best interest of the Club. The main committee has no authority to waive the court awarded costs, when it has been given the responsibility to control the revenue and expenditure of the Club under r. 27(a) of the Club Rules. Its action should not cause financial loss to the Club. The member concerned had sued the Club and the Club had incurred expenses in defending the said lawsuit.

[28] My view is this. Whether waiving the court awarded costs amounts to misconduct is a matter for the disciplinary committee to decide. I will not interfere with the internal deliberations and disciplinary affairs of the Club. The decision whether r. 38(b) of the Club Rules has been contravened is a matter to be determined by the internal management of the Club, *ie*, the disciplinary committee and the main committee.

[29] Nevertheless, I agree with D1 that the complaint lodged by the second defendant can form the subject of a disciplinary action. The conduct complained of need not be confined to an act by P personally as a member while on the Club premises. It can extend to an act of P as a member of the main committee. The principle of collective responsibility applies if the main committee makes a decision. The collective decision of the main committee can be impugned if it contravenes the provisions of the Club Rules.

[30] The fact that the main committee is answerable to the general body at the AGM (annual general meeting) or EGM, does not mean that any misconduct committed by it cannot be investigated upon. It is incorrect for P to argue that disciplinary action against a decision of the main committee has to be initiated by the general body at the AGM or EGM, and then referred to the disciplinary committee. I consider that it is the disciplinary committee which decides whether what has been done is a misconduct from the standpoint of the Club Rules. An individual member has the right to

lodge a complaint into an act which is considered to be a misconduct. It is not the individual member who decides whether it is a misconduct under the Club Rules. That responsibility has been left to the disciplinary committee.

[31] I disagree with P's contention that it is the general body which has the authority to refer a misconduct of the main committee to the disciplinary committee. The Club cannot be expected to call for an EGM every time a misconduct is committed. That is the reason why the disciplinary committee exists. It investigates complaints, no matter whether the complaint is against an individual member or the main committee. The disciplinary committee has the power to decide on charges of misconduct and recommend the punishment, if there is basis for finding that an individual member or a body such as the main committee has committed misconduct.

[32] Citing r. 47(m) of the Club Rules, P argues that redress by an aggrieved party in respect of a decision of the main committee is through recourse to the general body at an EGM. However, r. 47(m) of the Club Rules has to do with the relationship between the Club and its various sections. It reads – "The redress by a section aggrieved by a decision of the committee will be by recourse to an extraordinary general meeting under r. 35". That rule is not in relation to disciplinary proceedings. I therefore disagree with P's contention that the disciplinary committee does not have the authority to inquire into the action of the main committee. The members' wishes will prevail during the EGM, after the disciplinary committee has completed its investigation and decided on the punishment, if any.

[33] The action of the main committee complained of by the second defendant is not that it was dishonest, but that it is something beyond the powers of the main committee. In my opinion, an act of the main committee which is contrary to the Club Rules, can amount to misconduct. Moreover, there is precedent whereby the disciplinary committee had taken action against a decision of the main committee. This demonstrates that the main committee is subject to disciplinary action.

[34] In the year 2014, the main committee issued a notice of EGM under r. 35(a) of the Club Rules for a meeting to be held on 26 October 2014. The meeting was to consider and if deemed fit, pass the following resolution:

> WHEREAS this Meeting notes of a situation where the Disciplinary Committee had upon two (2) *complaints* made by Ooi Kee Min (O675 - C) purportedly under Rule 41(c) of the Club Rules, on 7th July 2014 and 7th August 2014 *against the officials of the Main Committee* and the officials of the Swimming Committee (hereinafter referred to as 'the said Complaints') attempted to suspend the President of the Club, Club Captain and the entire Swimming Committee for a period of 1 month and to caution the rest of the Main Committee of the Club; purportedly under Rule 41(d) of the Club Rules;

WHEREAS this Meeting notes that, the Main Committee had unanimously resolved, pursuant to Rule 49 of the Club Rules, that the said Complaints do not constitute as valid 'complaints' under Rule 41(c) of the Club Rules as the said *complaints are (i) not against a 'member' personally but instead only against official positions in the Club and (ii) not concerning 'behaviour and/or conduct' but against the exercise of official duties* in the Club;

WHEREAS this Meeting also notes that, the *Main Committee had unanimously resolved, pursuant to Rule 49 of the Club Rules, that the Disciplinary Committee does not have jurisdiction to adjudicate upon the said Complaints* under Rule 41(d) of the Club Rules and any attempts to do so shall not be recognised by the Club;

NOW THIS MEETING HEREBY *RESOLVES to fully support and commend the Main Committee for its stand taken against the Disciplinary Committee* in respect of the said Complaints. (emphasis added)

[35] The result of the 26 October 2014 EGM was that the aforesaid resolution was defeated by the vote of members at the EGM. This is evident from the minutes of meeting of the said EGM, which reads:

2.93 After the vote was taken and counted, the Acting Hon. Secretary announced that the results as follows:

Against - 151

In favour - 149

The MC resolution was defeated by 2 votes.

[36] The above precedent shows that the disciplinary committee had acted against the action of the main committee and that the main committee is subject to disciplinary action. It also shows that the highest body of the Club (*ie*, the main committee) can be questioned and is not immune from investigation. In other words, the very same issue raised by P in this action had been considered and put to vote at an EGM held on 26 October 2014, and was voted down by the members of the Club. Pertinently, decisions made in the AGM or EGM of the Club are binding and cannot be disregarded.

[37] Next, the fact that the Club's financial statements have been approved by the general body in an AGM, does not mean that it is beyond question. Actually, the audited accounts do not show details of transactions. There is no full disclosure about the waiver of the court awarded costs and allocator fees in the audited accounts. A member has the right to lodge a complaint if a misconduct comes to light subsequently, as in this case with the complaint by the second defendant.

[38] To sum up, P was a member of the Club and a member of the main committee at the material time. Regardless of whether he is a member of the main committee or just an ordinary member, he has to adhere to the Club

Rules in respect of discipline. All members are subjected to discipline from the President downwards. P has to be a member of the Club in the first place in order to be a member of the main committee. He was part of the main committee which made the impugned decision. As such, he cannot attempt to escape accountability by contending that the complaint of misconduct is not against him personally as a member while on the Club premises.

[39] The disciplinary committee is an independent body vested with power to inquire into the decision of the main committee referred to it, or other complaints of misconduct of the members of the Club referred to it by the main committee or the secretary. Pursuant to r. 41(c) of the Club Rules, the main committee or the secretary must transmit all complaints received to the disciplinary committee for further action. The main committee is subservient to the Club Rules. It does not have unfettered power to make any decision according to its whims and fancies.

[40] Without exception, all members of the Club are subject to the Club Rules, including disciplinary proceedings for misconduct. One cannot escape disciplinary proceedings on the ground that he is a member of the main committee, or that it was a collective decision of the main committee. Members of the main committee do not enjoy immunity from disciplinary proceedings when the matter relates to misconduct. The main committee is not above the Club Rules or immune from investigation, just because the main committee is vested with the power to interpret the Club Rules. In this case, it is not only P but also other members of the main committee at the material time, who have been subjected to disciplinary proceedings.

[41] In the circumstances, I answered question (i) in the affirmative. To wit, that the disciplinary committee can take action against P, a member of the main committee, based on the complaint from the second defendant.

Question (ii) – Whether The Charge Against The Plaintiff Is Within The Rules Of The Club And Not *Ultra Vires*

[42] It is my finding that the charge against P is not *ultra vires* the Club Rules. In fact, P has recognised the jurisdiction of the disciplinary committee. The complaint by the second defendant was not the only complaint where P had been made the subject of disciplinary proceedings for a collective decision made at the material time when he was part of the main committee.

[43] There was another complaint lodged by one Rainer Tischler dated 2 May 2024 against P and the other members of the main committee at the material time. As a result of the said complaint, a disciplinary inquiry was conducted on 9 July 2024 and on 17 July 2024, which was attended and participated by P. The outcome of the said disciplinary inquiry was that P had been found guilty of the following charge against him:

You being a member of the Management Committee had during the Main Committee meeting held on Tuesday 31 May 2022, at the Conference Room, Level 4, Tower Block at 7.30pm had readmitted a defaulter, Feroz Anandani bin Johan Mohandas who had defaulted for a 3rd time in breach of Rule 40(c)(v) which reads as follows:

> The defaulter may however appeal in writing to the Committee for readmission as a member, If the Committee is satisfied with his explanation for the non-payment of his account, the Committee may, at its discretion and upon full settlement of the account readmit him as a member of the Club without payment of any entrance fee but subject always to a maximum readmission of not more than two times.

[44] The decision of the disciplinary committee in respect of the aforementioned complaint was informed to P *via* a letter dated 1 October 2024 issued by the disciplinary committee. P was informed that he was found guilty as charged. And that he was suspended from the Club with effect from 3 October 2024 to 2 December 2024 for a period of two months, pursuant to r. 41(d)(ii) of the Club Rules.

[45] Based on the matters stated above, P cannot approbate and reprobate. In that he cannot on the one hand challenge the powers of the disciplinary committee in instituting disciplinary proceedings against him in this case, *ie*, in respect of the complaint lodged by the second defendant. And on the other hand accept the decision in another case, *ie*, in respect of the complaint lodged by Rainer Tischler. As such, P is precluded by estoppel and acquiescence from challenging the powers of the disciplinary committee for being allegedly *ultra vires* the Club Rules. (See the Court of Appeal cases of *Cheah Theam Kheng v. City Centre Sdn Bhd (In Liquidation) & Other Appeals* [2012] 2 CLJ 16; *A Karunathan Arunasalam & Ors v. Pentadbir Tanah Daerah Petaling & Another Appeal* [2011] 7 CLJ 130).

[46] In the circumstances, I answered question (ii) in the affirmative. To wit, that the charge against P is within the Club Rules and not *ultra vires*.

Question (iii) – Whether The Plaintiff Was Given The Right To Be Heard By The Disciplinary Committee

[47] Here is where I part ways with D1. It is my finding that P was not given the right to be heard, and he was not heard by the disciplinary committee. This amounts to a breach of the rules of natural justice.

[48] The facts are these. The disciplinary committee scheduled a hearing regarding the second defendant's complaint on 24 July 2024. However, P could not attend the hearing due to business commitments in Russia. On 18 July 2024, he requested a postponement of the hearing. He sent an email to the Chairman of the disciplinary committee stating that he would be away overseas from 19 July 2024, and requested for a new hearing date.

The disciplinary committee asked him to provide documentation to verify his travel to Russia. Subsequently, P submitted a copy of his flight boarding pass to the disciplinary committee on 22 July 2024.

[49] On 20 July 2024, the disciplinary committee denied P's request to postpone the hearing. Citing r. 41(e) of the Club Rules, the disciplinary committee requested P to submit his written explanation regarding the charge by 24 July 2024, despite P's request to defend himself in person. However, by that time, *ie*, on 20 July 2024, P had already embarked on his journey from Kuala Lumpur to Moscow, stopping in Abu Dhabi.

[50] The communication between P and the Chairman of the disciplinary committee is outlined below.

Date	Particulars
18.7.2024	P: "I'll be away overseas from tomorrow till 8/8/24. Please give me a new date".
19.7.2024	Chairman: "One of the DC members is leaving overseas after the hearing as such no request for postponement will be entertained. Kindly ensure you are present at the hearing, failing which it will proceed in your absence".
19.7.2024	P: "I am overseas too and hence won't be able to attend".
20.7.2024	Chairman: "Reference to your email dated July 19, 2024 and our response on the same instant. Although you have requested for postponement, you have however refused to furnish evidence that you are going overseas. The Disciplinary Committee shall therefore proceed with inquiry as scheduled and will invoke Rule 41(e). Rule 41(e), states as follows: 'Provided always that before exercising any powers conferred on it by the above clauses, the Disciplinary Committee shall allow the member an opportunity to be heard either in person and/or in writing'. Per above rule, the Disciplinary Committee will give the opportunity to put in writing your explanation, which is to be delivered on/before 24 July 2024".
22.7.2024	P: "I am overseas at the moment and would respond once I am back on 31/7/2024".
23.7.2024	P: "I don't have internet all the time as there is a war going here".

[51] I find that the disciplinary committee has breached the principles of natural justice by failing to provide adequate time for P to prepare a defence against the charge and defend the charge in person. As a result, the hearing held on 24 July 2024 was conducted in P's absence, despite his request for a postponement along with the submission of his flight boarding pass to the disciplinary committee. This raises concerns about the principles of fairness and the right to be heard.

[52] On 1 October 2024, the disciplinary committee issued a ruling following the hearing held in P's absence. It stated – "Your conduct is unbecoming of a member and injurious to the character and interest of the Club". The disciplinary committee concluded that the Club Rules necessitated P's expulsion from the Club, with this decision set to take effect on 3 October 2024, as per r. 41(d)(iv) of the Club Rules.

[53] I consider this to be rather unfair. The disciplinary committee ought to have acted fairly and provide more time for P to prepare his case. At the very least, it could have granted one adjournment, in view that P asked for a short adjournment. It should have been conscious of the injustice caused by the failure to give P sufficient time to appear in person to defend himself. It should not have proceeded with the hearing in P's absence.

[54] P's request to postpone the disciplinary inquiry was genuine and not unreasonable, given his circumstances. I do not understand the disciplinary committee's haste in pressing ahead with the hearing, despite P's absence. As far as I can tell, there was no compelling urgency to hasten the conclusion of the disciplinary proceedings. It must be emphasised that P very much wanted to attend the disciplinary inquiry and defend himself in person. But he was unable to attend the hearing scheduled on 24 July 2024 due to being out of the country. There was no justifiable reason to proceed on the originally scheduled date. The disciplinary committee's dismissive attitude in refusing a brief adjournment, in my opinion, undermines the principles of fair process for the parties involved.

[55] I refer to the following authorities. In *Mat Ghaffar Baba v. Ketua Polis Negara & Anor* [2008] 1 CLJ 773 at pp. 782-783 (CLJ); [2008] 2 MLJ 1 at pp. 9 to 10 (MLJ), the Court of Appeal held:

> [26] In the circumstances, after considering the charges levelled against the plaintiff, we are of the view that *in all fairness the plaintiff ought to have been given an oral hearing as requested by him.* … In the circumstances we agree with the plaintiff's counsel that there had been a *clear breach of the rules of natural justice* as embodied in art 135(2) of the Federal Constitution which renders the disciplinary proceedings null and void. In this regard we are reminded of the observation made by Lord Denning in *B Surinder Singh Kanda v. The Government of The Federation of Malaya* [1962] MLJ 169, at the p 172 which reads:

> *If the right to be heard is to be a real right, which is worth anything,* it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him: and then he *must be given a fair opportunity to correct or contradict them.*
>
> (emphasis added)

[56] In *Yusof Sudin v. Suruhanjaya Perkhidmatan Polis & Anor* [2012] 1 CLJ 448; [2011] 5 AMR 688; [2011] 5 MLJ 465, the Federal Court held:

> [25] It is my considered view that the cases of *Ang Seng Wan* and *Mat Ghaffar* [2011] 5 MLJ 465 at 481 have laid down the principle and the clear situation as to *when the disciplinary committee should convene an oral hearing.* The position would be that *when there is a request by the public officer for an oral hearing* after he had denied all the charges and appears to have exculpated himself by furnishing credible evidence in his representation letter, then by virtue of Order 26(5) of the General Orders 1980, the officer *should be afforded an oral hearing* to satisfy the requirement of art 135(2) of the Federal Constitution which states that a reasonable opportunity of being heard be given before any member of such a service could be dismissed or reduced in rank. It would become all the more necessary for the oral hearing or enquiry to be held if there is no evidence to contradict the public officer's exculpatory statement. On this point it is to be stated that *oral hearing should be granted when there is a request* and when the disciplinary committee is faced with two (2) sets of facts, documents and evidence, that is, the investigation report from the investigating authority and that of the officer's representation letter which is exculpatory in nature. A disciplinary committee can only come to a fair conclusion between these two (2) versions upon hearing further evidence.
>
> (emphasis added)

[57] D1 argues that the right to be heard is not limited to a right by oral hearing, but also encompasses the right to be heard through writing. Under r. 41(e) of the Club Rules, every member has the right to be heard either in person and/or in writing. In the present case however, P had stated in no uncertain terms that he wished to be heard in person. He had clearly indicated his intention to present his case in person upon his return from Russia on 31 July 2024. Despite this, the disciplinary committee chose to move forward with the hearing on 24 July 2024 in his absence, ultimately declaring him guilty and expelling him from the Club. Such disregard for P's right to be present, in my view, undermines the fairness of the process, breaching the rules of natural justice.

[58] In the circumstances, I answered question (iii) in the negative. To wit, that P was not given the right to be heard by the disciplinary committee. In view of the breach of natural justice, I find that the disciplinary committee's decision in revoking P's membership in the Club is flawed and should be deemed invalid.

Breach Of r. 41(d)(iii) Of The Club Rules

[59] I further find that the disciplinary committee had failed to adhere to r. 41(d)(iii) of the Club Rules, before taking the step of expelling P from the Club. The said rule is a prerequisite that must be complied with before the expulsion. However, D1 did not follow the said rule. As a result, P was not offered the opportunity to resign or transfer his membership in accordance with the said rule. It is only if P does not exercise one of those options that D1 can proceed with expulsion against him pursuant to r. 41(d)(iv) of the Club Rules.

[60] Rule 41(d) of the Club Rules is reproduced below.

> (d) Upon receipt of the complaint regarding the conduct of a member and/or his guest, the Disciplinary Committee shall within one month or such further period as it may deem fit and proper but in any event not exceeding 3 months, make such inquiry into the matter as it may consider necessary and if it shall be of the opinion that the conduct complained of or brought to its notice as aforesaid is unbecoming of a member of the Club or injurious to the character or interests of the Club, then, in such case, the Disciplinary Committee may;
>
> (i) caution the member or
>
> (ii) suspend the member from the privileges of membership for a period not exceeding three months or
>
> (iii) recommend to the member to resign from the Club or transfer his membership in accordance with the rules of the Club, *and in the event of the member failing to resign, transfer his membership aforesaid within seven days after the recommendation, the Disciplinary Committee shall take action as is specified in Rule 41(b)(iv).*
>
> (iv) expel the member from the Club whereupon he shall forthwith cease to be a member of the Club and shall loose all such rights and privileges attaching to his membership of the Club.
>
> (emphasis added)

[61] Based on the above rule, the disciplinary committee may do one of three things. It can either: (i) caution the member; or (ii) suspend the member; or (iii) recommend to the member to resign or transfer his membership. Only when the member fails to resign or transfer his membership as per the recommendation of the disciplinary committee, can it then take the action of expelling the member as specified in r. 41(d)(iv) of the Club Rules.

[62] To sum up, P was not allowed to be heard in person during the disciplinary hearing on 24 July 2024. Further, he was not given the opportunity to resign or transfer his membership as provided for under r. 41(d)(iii) of the Club Rules before his expulsion. On this ground, I held that the disciplinary inquiry conducted on 24 July 2024 in P's absence was

A void. I held that the disciplinary committee's decision to expel P from the Club effective 3 October 2024 was invalid. I ordered that a fresh disciplinary hearing be conducted by the disciplinary committee. This time, with P being afforded a fair opportunity to be heard. And if he so desires, for P to be allowed to appear in person and defend himself.

B **[63]** To be clear, I do not impose any condition on the outcome of the fresh disciplinary inquiry. It could be that the disciplinary committee might find P guilty of misconduct after hearing his defence. All I am saying is that the rules of natural justice ought to be observed and due process followed.

C **[64]** Lastly, P claims that he did not receive the show cause letter dated 29 May 2024 from the Club. But that has become academic now that I have ordered a fresh disciplinary inquiry.

Question (iv) – Whether The Requirement In Respect Of The EGM Requisitioned By The Plaintiff Was Complied With By The Club?

D **[65]** Subsequent to his expulsion, P exercised his right of appeal against the expulsion under r. 41(f) of the Club Rules. He requested that an EGM be convened for him to address the general body of members. This act of P further manifest that he has recognised the jurisdiction of the disciplinary committee. Once again, he is bound by estoppel and acquiescence from E challenging the powers of the disciplinary committee for being purportedly *ultra vires* the Club Rules.

[66] In response to his request, the Club convened two EGMs on 17 November 2024. Whereby the morning session was allocated for the appeal by another member of the Club named Chan Kean Hin, and the F afternoon session was allocated for P's appeal. P contends that both EGMs must be held together. However, I see no requirement for both EGMS (one requested by Chan Kean Hin and one requested by P respectively) to be held together.

G **[67]** The Club is entitled to hold one EGM session in the morning and one in the afternoon, with ample time given for preparation and registration for both prior to the respective EGM time slots. Moreover, both P and Chan Kean Hin were subject to separate disciplinary proceedings and had received separate decisions in respect of the complaints lodged against them. Hence, P's request to have the EGMs together or consecutively is not necessary. The H rejection of his request does not compromise the fairness of the process as alleged by him.

[68] Further, P in his initial letter requesting for the EGM pursuant to r. 41(f) of the Club Rules, did not request for a joint EGM. It was only subsequently that he made a request, after the EGM notices had been sent I out. However, at the point of his subsequent request, he was informed that separate EGM notices had already been sent out. And therefore, the EGMs would proceed separately as scheduled.

[69] Rule 36 of the Club Rules reads:

Quorum of Extraordinary General Meetings

36. The quorum at an Extraordinary General meeting shall be two hundred Ordinary or Ordinary Transferable Members present. If there is no quorum at the end of thirty minutes after the appointed time, the Meeting shall:

(i) If called by the Committee, be postponed to a date not more than twenty-one days and all members advised in writing. The business at the postponed Meeting shall be the same as and none other than that to be dealt with at the original Meeting. The Ordinary and Ordinary Transferable Members present at the postponed Meeting shall constitute a sufficient quorum whether they number two hundred or not.

(ii) **If called on a requisition by members, be cancelled.**

(emphasis added)

[70] The EGM scheduled on 17 November 2024 (in respect of the afternoon session) was requested by P pursuant to r. 41(f) of the Club Rules. As such, based on the interpretation of the Club Rules by the main committee, the Club was of the view that the EGM scheduled on 17 November 2024 was requisitioned by a member and not one called by the main committee. Therefore r. 36(i) of the Club Rules does not apply. Instead, r. 36(ii) of the Club Rules is the provision that is applicable.

[71] In this regard, D1 relies on r. 49 of the Club Rules which reads:

Interpretation

49. The Committee shall be the sole authority for the interpretation of these Rules and any By-Laws and their decision on any question of interpretation shall be final and binding on the members.

[72] First of all, I do not think r. 49 of the Club Rules precludes the court from interpreting the Club Rules. That said, I agree with D1's interpretation of r. 36 of the Club Rules. In my opinion, the Club was entitled to cancel the scheduled EGM of 17 November 2024, which was requisitioned by P, when the requisite quorum of 200 members was not achieved within the prescribed time, in accordance with r. 36(ii) of the Club Rules.

[73] I am of the view that P's situation falls under r. 36 (ii), and not under r. 36(i), of the Club Rules. Hence, there is no requirement to postpone the 17 November 2024 EGM. There is no provision in the Club Rules for the main committee to set a date for a new EGM to consider P's appeal. Since there was no quorum for the EGM requisitioned by P as a member, the 17 November 2024 EGM was duly cancelled under r. 36(ii) of the Club Rules.

[74] In the premises, P cannot demand another opportunity or decision of the general body. Otherwise, in every case of requisition for an EGM by a member relating to his appeal, if there is no quorum under r. 36(ii) of the Club Rules, the main committee would be required to convene another EGM to confirm the decision of the disciplinary committee with regard to expulsion. The cancellation of the EGM due to lack of quorum tantamount to the decision.

[75] Moreover, there is precedent in this regard in that a previous EGM requisitioned by a member and held on 25 March 2012 could not proceed, as there was no quorum of 200 members achieved after the prescribed time. Similarly, the said 25 March 2012 EGM was cancelled and was not adjourned or reconvened. This is consistent with what is provided in r. 36 of the Club Rules.

[76] The Club has no obligation to secure a quorum of 200 members for P's appeal to be heard. On 17 November 2024 at the EGM requested by P, the total number of members registered was only at 105 members. The Club cannot force the members to be interested in P's requested EGM and its proposed agenda. The Club had done all it could in order to facilitate P's requisitioned EGM. Wherein the chairman of the morning session EGM even reminded the members present that there would be another EGM for the afternoon session starting at 2.30pm on the same day.

[77] In addition, the Club even catered lunch for the members on 17 November 2024 after the morning session, *ie*, after Chan Kean Hin's appeal was over. However, although many members stayed back to take the lunch provided by the Club, less than 200 of the members chose to stay back. Whether they were interested in P's appeal or not was not in the hands of the Club.

[78] In short, the Club cannot be expected to ensure a quorum for P. Similarly, the Club cannot be expected to keep on postponing or reconvening the EGM until a quorum of 200 members is achieved for P. This might be a futile or endless exercise, which is not provided under the Club Rules.

[79] In the circumstances, I answered question (iv) in the affirmative. To wit, that the requirement in respect of the EGM requisitioned by P was complied with by the Club.

Whether A Trial Of This Matter Is Necessary

[80] Before ending, I will deal with the question of whether a trial of this action is necessary. P insists that the questions posed by D1 in encl. 10 are factual questions which ought to be determined in a full trial. P contends that the court should not invoke its discretionary powers under O. 14A and O. 33 r. 2 of the Rules of Court 2012, because it would not result in a substantial saving of time and costs. I disagree.

[81] I am cognisant that an application under O. 14A and O. 33 r. 2 of the Rules of Court 2012 is not appropriate where the facts are in dispute or where extrinsic evidence is required to be adduced. (See the Federal Court cases of *Thein Hong Teck & Ors v. Mohd Afrizan Husain & Another Appeal* [2012] 1 CLJ 49; [2012] 2 MLJ 299; *Lembaga Pembangunan Industri Pembinaan Malaysia v. Konsortium JGC Corporation & Ors (Sued As Incorporated Partnership)* [2015] 9 CLJ 273; the Court of Appeal cases of *Seloga Jaya Sdn Bhd v. UEM Genisys Sdn Bhd* [2008] 2 CLJ 686; *Dream Property Sdn Bhd v. Atlas Housing Sdn Bhd* [2007] 6 CLJ 741; [2008] 2 MLJ 812; *Savant-Asia Sdn Bhd v. Sunway PMI-Pile Construction Sdn Bhd* [2008] 1 CLJ 191; [2007] 7 MLJ 706; *Ramba Bungkong & Ors v. Asco Green Sdn Bhd* [2020] 8 CLJ 1; *Petroleum Nasional Bhd v. Kerajaan Negeri Terengganu & Another Appeal* [2003] 4 CLJ 337).

[82] Upon a scrutiny of the pleadings, I concluded that the material facts are not in dispute in the present case. Accordingly, O. 14A and O. 33 r. 2 of the Rules of Court 2012 may be resorted to. I consider that this action is suitable for determination without a full trial. It can be determined based upon a construction of the Club Rules.

[83] The undisputed facts are these:

(i) on 11 January 2023, P and the other members of the main committee met and decided to waive the RM8,320 costs awarded by the Penang High Court against a certain member of the Club;

(ii) on 13 May 2024, the disciplinary committee received a complaint from the second defendant regarding the main committee for the 2022 to 2023 term. The complaint pertained to the decision by the main committee to waive the aforesaid court-awarded costs. The second defendant alleged that the main committee acted improperly and violated r. 38(b) of the Club Rules by waiving the said court-awarded costs;

(iii) pursuant to the aforementioned complaint, the disciplinary committee held a disciplinary inquiry on 24 July 2024. P was not present at the said hearing;

(iv) the disciplinary committee found P guilty as charged. It took steps to expel P from the Club, effective 3 October 2024; and

(v) P had exhausted all internal remedies under the Club Rules before commencing this action.

Recusal Application

[84] Finally, I will address P's application to recuse me from hearing this matter *vide* encl. 13 dated 11 June 2025. The grounds canvassed by P for recusal is as follows:

(i) I am an honorary member of the Club;

(ii) I had made a decision against another member of the club for the same complaint in Penang High Court Originating Summons No. PA-24 NCvC-789-07-2024 ("said OS"); and

(iii) therefore, there is a likelihood of bias on my part if I continue to preside over this matter.

[85] I declined to recuse myself from hearing this matter due to the following reasons. Firstly, I am only an honorary member of the club. Honorary membership of the club is given to all sitting judges of the High Court at Penang and other selected persons. As an honorary member, I have no direct interest in the club. This stands in contrast to members who have to purchase the membership, pay subscription, have voting rights and have the right to enjoy other rights and privileges as members of the club.

[86] Having access to the club's facilities does not deprive me of impartiality and judicial independence. I have no personal, pecuniary or proprietary interest in the outcome of this litigation. I have no close friendship or association with any member of the club, including the main committee or the disciplinary committee, which may prevent me from making an objective determination of the issues in this case.

[87] Secondly, the mere fact that I had made a decision in the said OS in relation to an application filed by another member of the club does not disqualify me from hearing P's case. There are distinct differences between the said OS and the facts relating to P herein.

[88] The said OS 789 was filed by Chan Kean Hin ("Chan"). He was the President of the main committee at the material time, in which P was the Vice-President. Chan was removed in an EGM held on 26 February 2023. Subsequent to his removal, a Penang High Court Civil Suit No. PA-22 NCvC29-03-2023 ("said suit") was filed by the club and others against Chan and the other members of the main committee at that time for declarations and injunction. The said suit was subsequently settled by way of a consent judgment. Incidentally, the said suit was also heard by me. This is not surprising as there are only two courts which hears newly registered cases. Namely, NCvC1 (my court) and NCvC2.

[89] Chan filed the said OS after disciplinary proceedings had been commenced against him by the disciplinary committee but before its completion. Chan did not wait for the investigation by the disciplinary committee to be completed before he filed the said OS. I decided that Chan's action was pre-mature as he had not exhausted the internal remedies provided by the Club Rules prior to filing the said OS. My decision is reported at at *Chan Kean Hin v. Lee Ville & Ors* [2024] CLJU 3180.

[90] Whereas, P herein filed this action after he had been found guilty of the charge against him and after he had exhausted the internal remedies as provided under the Club Rules. The factual matrix of the said suit and the said OS are different from P's case herein. As such, *Chan*'s case cannot be tantamount to a precedent for P's case herein. Notwithstanding that the same judge had decided the said suit and the said OS, and this action is also before the same judge.

[91] More importantly, the mere fact that I had decided the said suit and the said OS, does not mean that there is a real danger of bias on my part if I continue to preside over this matter. Biasness cannot be established merely by reason only of the fact that I had made a decision adverse to Chan in a previous case decided by me in the said OS, or for that matter in the said suit. Biasness should not be imputed merely because of my previous decision in relation to disciplinary proceedings against Chan. That decision was made based on the facts of the said OS.

[92] P should not approach his case with a disposition that I had prejudged the matter and will decide against him. Or that I will be influenced by partiality or prejudice against him. He has not demonstrated any lack of objectivity on my part. I did not express any prior extreme remarks or make any adverse findings against P in this case or showed any animosity towards P. So as to give him cause to doubt my ability to try his case with an objective judicial mind and impartiality.

[93] I conclude that it would be wrong and a dereliction of duty for me to disqualify myself from presiding over this matter, when there are no grounds to do so.

Conclusion

[94] For the reasons above, I did not answer the questions posed under encl. 10 in the manner desired by D1. As such, I did not dismiss P's claim and instead allowed it in part. I made no order as to costs, which I felt was appropriate in the circumstances of the case.